

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

ROGER A. STRODTBECK,

CV 09-153-M-DWM-JCL

Plaintiff,

vs.

BRIAN J. JONES,
KRISTI CURTIS, and
HEIDI ULBRICHT,

FINDINGS AND
RECOMMENDATION
OF UNITED STATES
MAGISTRATE JUDGE

Defendants.

Review of the record reflects that Plaintiff Roger Strodbeck has not effected service of the summons and his Complaint on the Defendants as required by Fed. R. Civ. P. 4(e). Strodbeck has not obtained summonses from the Clerk of Court, and he has not filed proof of service. Fed. R. Civ. P. 4(l).

Strodbeck was required to effect service within 120 days after he filed his Complaint. Fed. R. Civ. P. 4(m). Strodbeck filed his Complaint on October 15, 2009. Therefore, the 120-day period expired on February 12, 2010, and according to the record in this case Strodbeck has not served his Complaint on Defendants.

If a plaintiff fails to serve a complaint on the defendants within the referenced 120-day period, the Court “must dismiss the action without prejudice

against [the defendants] or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). The Rule provides, however, that “if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.*

By Order entered February 8, 2010, the Court explained the forgoing circumstances to Strodbeck, and afforded him an opportunity show good cause for his failure to serve his Complaint. The referenced Order required Strodbeck to make his showing of good cause by February 22, 2010. Strodbeck, however, did not file anything in response to the Court’s Order. Furthermore, the Court advised Strodbeck that if he failed to respond to the Order his Complaint would be dismissed without prejudice under the provisions of Rule 4(m).

ACCORDINGLY, IT IS RECOMMENDED that Strodbeck’s Complaint be **DISMISSED WITHOUT PREJUDICE** under Rule 4(m) for failing to serve his Complaint on the Defendants within 120-days after October 15, 2009, when he filed his Complaint with this Court.

DATED this 24th day of February, 2010.

/s/ Jeremiah C. Lynch
Jeremiah C. Lynch
United States Magistrate Judge